IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

Crl.L.P..No. 948 of 2007()

CC.626/2005 of J.M.F.C.-I,THRISSUR
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PETITIONER/COMPLAINANT
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INVEST CHITS & GENERAL FINANCE (P) LTD.,
URAKAM REP. BY CHAIRMAN BABU S. THAIVALATH.

BY ADV. SRI.K.A.SREEJITH

RESPONDENTS: ACCUSED & STATE
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1. HYDERALI, S/O. MUHAMED,
ARAKKAL HOUSE, P.O. THANISSERY,
MUKUNDAPURAM TALUK.

2. STATE OF KERALA REP. BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, KOCHI-31.

R2-BY SRI.PUZHAKKARA MOHAMMED

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 02/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.L.P.NO.948 OF 2007

Dated this the 2nd day of November, 2007.

O R D E R

This is an application for special leave to appeal against the order in C.C.No.626/2005 on the file of the Judicial Magistrate of First Class-I, Trichur. The petitioner/complainant filed a complaint before the court below under Section 138 of the N.I.Act, 1881 alleging that the 1st respondent/accused in the above case owed an amount of Rs.1,34,760/= to the complainant for which the 1st respondent had issued a cheque. Further it was alleged that the amount so covered by the cheque was the decree amount in O.S.No.1251/2001 and when the cheque was presented for encashment, the same was dishonoured on the ground of insufficiency of fund with the account of the 1st respondent. To prove the case against the 1st respondent, the petitioner/complainant himself was examined as PW1 and relied on Exts.P1 to P11. After closing the evidence adduced for and on behalf of the petitioner/complainant, the 1st respondent/accused was questioned under Section 313 of the Code of Criminal Procedure. Denying the allegations contained in the complaint, the 1st

respondent had stated that the cheque in question was not issued for the discharge of any amount as claimed by the petitioner/complainant, at the same time, the 1st respondent had stated that he was a subscriber of chitty conducted by the complainant and he had bid the chitty. Further he had stated that since the instalment had became due, the complainant filed a suit against him and that was decreed. But, that decree amount has not been executed by the petitioner/complainant through the court. The 1st respondent further had stated that the cheque in question was actually given by him as a security for the chitty amount and the cheque in question was issued at the time of bidding of the chitty as security. In these circumstances, after considering the evidence, the trial court found that the petitioner failed to prove that the cheque in question was issued for any decree amount of the suit and the trial court found that the cheque in question was not based on any consideration at all and the petitioner failed to prove the principal amount for which the cheque has been issued in a civil suit. Apart from that, it is to be noted that even if the petitioner has got a decree from a civil court, Section 138 cannot be invoked for execution of such decree passed by the civil court unless the 1st respondent drawer of the

cheque has admitted that such an amount is due from him and the cheque was issued for discharge of that amount.

In the above circumstances, this Court is of the view that the judgment of the trial court does not require any interference. Accordingly, the petition for special leave to appeal shall stands dismissed as merit less.

K. THANKAPPAN, JUDGE.

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